

AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Eastern District of Texas, Marshall Division on the following

☐ Trademarks or ☒ Patents. (☒ the patent action involves 35 U.S.C. § 292.)

DOCKET NO. 2:10-cv-00580-TJW	DATE FILED 12/21/2010	U.S. DISTRICT COURT Eastern District of Texas, Marshall Division
PLAINTIFF Main Hastings LLC		DEFENDANT Precision Castparts Corp. and Cherry Aerospace LLC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 4,012,984	3/22/1977	Textron, Inc.
2 4,221,041	9/9/1980	Boeing Commercial Airplane Company
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input checked="" type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MAIN HASTINGS LLC,

Plaintiff,

v.

PRECISION CASTPARTS CORP. AND
CHERRY AEROSPACE LLC

Defendants.

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Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT FOR FALSE PATENT MARKING

Plaintiff/Relator, Main Hastings LLC, (herein referred to as "Main Hastings"), by its attorneys, hereby complains against Defendants Precision Castparts Corp. and Cherry Aerospace LLC and alleges as follows:

NATURE OF THE CASE

1. This is a *qui tam* action on behalf of the public for false patent marking under 35 U.S.C. §292.

2. As set forth below, Defendants have violated 35 U.S.C. §292(a), by marking certain of their products with the purpose of deceiving the public. More specifically, Defendants have, with the purpose of deceiving the public, marked products with patents that have expired and, therefore, do not and cannot cover the marked products.

3. The false marking statute exists to give the public notice of patent rights. Congress intended the public to rely on marking as a ready means of discerning the status of intellectual property embodied in an article of manufacture or design. Federal patent policy recognizes an important public interest in permitting full and free competition in the use of ideas that are, in reality, a part of the public domain.

4. False patent marking – including representing through advertisement that a product is covered by a patent that have expired - is a serious problem. Acts of false marking deter innovation and stifle competition in the marketplace. If an article that is within the public domain is falsely marked, potential competitors may be dissuaded from entering the same market. False marks may also deter scientific research when an inventor sees a mark and decides to forego continued research to avoid possible infringement. False marking can cause unnecessary investment in design around or costs incurred to analyze the validity or enforceability of a patent whose number have been marked upon a product with which a competitor would like to compete. Furthermore, false marking misleads the public into believing that a patentee controls the article in question (as well as like articles), externalizes the risk of error in the determination, placing it on the public rather than the manufacturer or seller of the article, and increases the cost to the public of ascertaining whether a patentee in fact controls the intellectual property embodied in an article. In each instance where it is represented that an article is patented, a member of the public desiring to participate in the market for the marked article must incur the cost of determining whether the involved patents are valid and enforceable. Failure to take on the costs of a reasonably competent search for information necessary to interpret each patent, investigation into prior art and other information bearing on the quality of the patents, and analysis thereof can result in a finding of willful infringement, which may treble the damages an infringer would otherwise have to pay. False markings may also create a misleading impression that the falsely marked product is technologically superior to previously available ones, as articles bearing the term “patent” may be presumed to be novel, useful, and innovative.

5. The false marking statute explicitly permits *qui tam* actions. By permitting

members of the public to sue on behalf of the government, Congress allowed individuals to help control false marking.

6. Main Hastings, on its own behalf and on behalf of the United States, seeks an award of monetary damages of not more than \$500 for each of Defendants' violations of 35 U.S.C. § 292(a), one-half of which shall be paid to the United States pursuant to 35 U.S.C. § 292(b).

THE PARTIES

7. Main Hastings is a Texas limited liability company.

8. Defendant Precision Castparts Corp. is a corporation established under the laws of the State of Oregon with its principal place of business at 4650 SW Macadam Avenue, Suite 440, Portland, Oregon 97239. Defendant Precision Castparts Corp. can be served through its registered agent, Roger A. Cooke at 4650 SW Macadam Avenue, Suite 300, Portland, Oregon 97239.

9. Defendant Cherry Aerospace LLC is a corporation established under the laws of the State of Delaware with its principal place of business at 1224 East Warner Avenue, Santa Ana, CA 92705-5514, and is a subsidiary and/or business unit of Defendant Precision Castparts Corp. Defendant Cherry Aerospace LLC can be served through its registered agent at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

10. Defendants regularly conduct and transact business in Texas, throughout the United States, and within the Eastern District of Texas, themselves and/or through one or more subsidiaries, affiliates, business divisions, or business units.

JURISDICTION AND VENUE

11. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §§

1331 and 1338(a).

12. This Court have personal jurisdiction over the Defendants. The Defendants have conducted and do conduct business within the State of Texas. Defendants, directly or through subsidiaries or intermediaries, offer for sale, sell, mark and/or advertise the products that are the subject of this Complaint in the United States, the State of Texas, and the Eastern District of Texas.

13. Defendants have voluntarily sold the products that are the subject of this Complaint in this District, either directly to customers in this District or through intermediaries with the expectation that the products will be sold and distributed to customers in this District. These products have been and continue to be purchased and used by consumers in the Eastern District of Texas. Defendants have committed acts of false marking within the State of Texas and, more particularly, within the Eastern District of Texas.

14. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1395(a), because (i) Defendants' products that are the subject matter of this cause of action are advertised, marked, offered for sale, and/or sold in various retail stores and/or on the Internet in this District; (ii) a substantial part of the events or omissions giving rise to the claim occurred in this District; and (iii) Defendants are subject to personal jurisdiction in this District, as described above.

15. Main Hastings brings this action under 35 U.S.C. §292(b), which provides that any person may sue for civil monetary penalties for false patent marking.

DEFENDANTS' FALSELY MARKED PRODUCTS AND PATENTS

A. CHERRYMAX® RIVET

16. Defendants manufacture, market, and sell a product identified as CherryMax® Rivet.

17. Figure 1 depicted below shows an image of the CherryMax® Rivet:

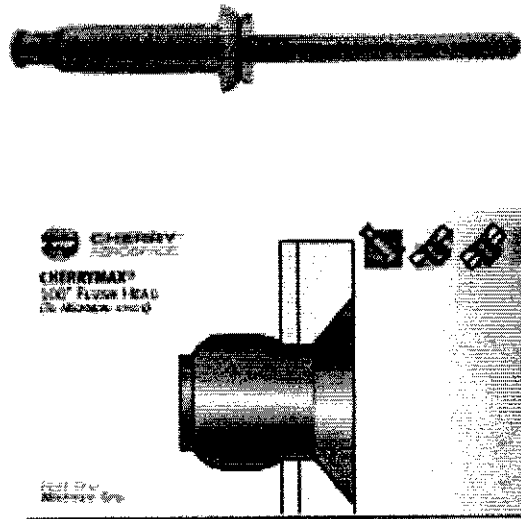


Figure 1 – Picture of CherryMax® Rivet

18. For a period of time, the packaging, advertising, and/or documentation for the CherryMax® Rivet have listed, among others, Patent No. 4,012,984 ("the '984 Patent"). Figure 2 below shows a copy of the documentation listing the '984 Patent as covering the CherryMax® Rivet. Attached as Exhibit A is a true and correct copy of the '984 Patent. Further, attached as Exhibits B-C are a CherryMax® Rivet Brochure and Process Manual respectively, both of which list the CherryMax® Rivet as being covered by the '984 Patent.

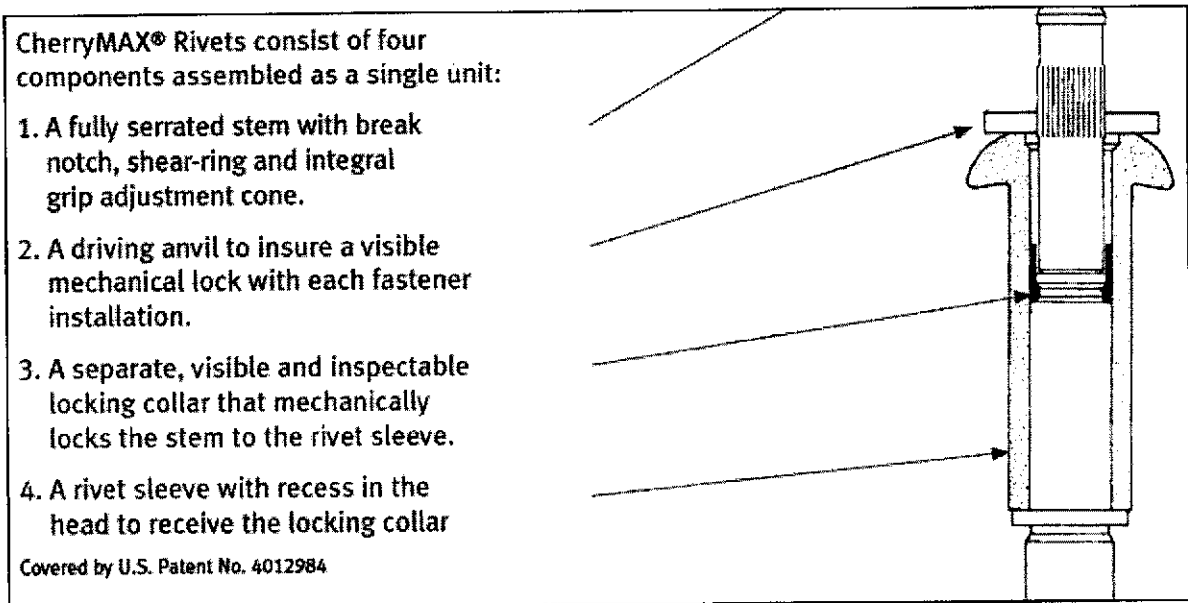


Figure 2 – Document Listing '984 Patent

19. The '984 patent, entitled "Blind Rivet Assembly With Locking Collar On Rivet Stem," was filed June 19, 1975, and issued on March 22, 1977. The '984 Patent expired on June 19, 1995.

B. CHERRY HOLLOW END E-Z BUCK

20. Defendants manufacture, market, and sell a product identified as Cherry Hollow End E-Z Buck.

21. Figure 3 depicted below shows an image of the Cherry Hollow End E-Z Buck:

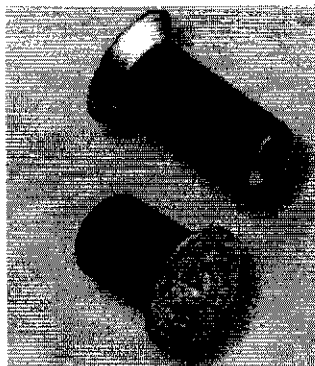
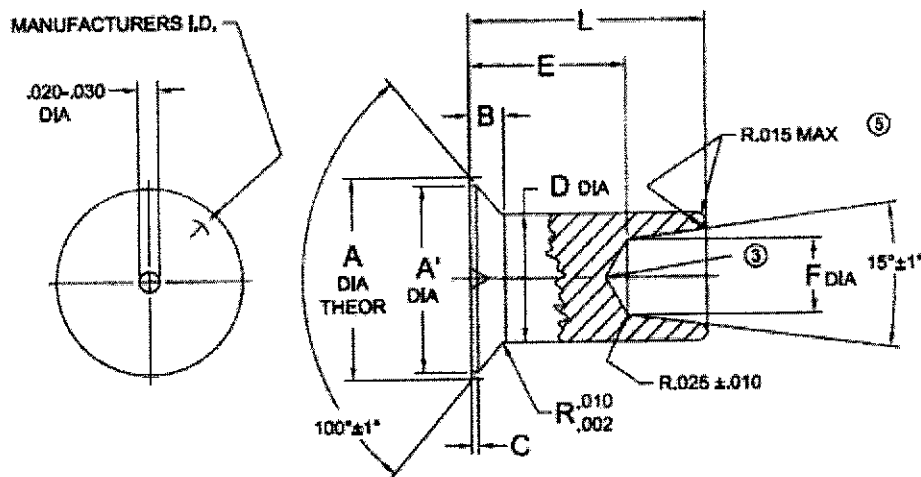


Figure 3 – Picture of Cherry Hollow End E-Z Buck

22. For a period of time, the packaging, advertising, and/or documentation for the Cherry Hollow End E-Z Buck have listed, among others, the following Patent No.: 4,221,041 ("the '041 Patent"). Figure 4 below shows a copy of the documentation listing the '041 Patent, among others, as covering the Cherry Hollow End E-Z Buck. Attached as Exhibit D is a true and correct copy of the '041 Patent. Further, attached as Exhibit E is a Cherry Hollow End E-Z Buck product documentation which lists the Cherry Hollow End E-Z Buck as being covered by the '041 Patent.

CHERRY® HOLLOW END E-Z BUCK®

STANDARDS



Diameter Dash No.	A ±.004	A' Min	B Bal	C Max	D +.003 -.001	F +.005 -.000
-4	.192	.174	.028	.006	.125	.073
-5	.243	.225	.037	.008	.156	.091
-6	.298	.275	.046	.010	.187	.110
-7 ⑥	.324	.298	.046	.010	.219	.142

Notes:

1. A .001" increase in "D" diameter is permissible within .100" from the base of the head.
2. Conical surface of head and tail recess to be concentric to "D" diameter within .005" F.I.M.
- ③ Bottom configuration of recess is optional.
4. Head cocking angle relative to rivet axis is 1/2° maximum.
- ⑤ Free flow of material in this area may be round, flat or chamfered.
6. Tail recess configuration is covered under Boeing Patent #4,221,041 and license agreement between Cherry Aerospace and the Boeing Company.

Figure 4 – Document Listing the '041 Patent.

23. The '041 Patent, entitled "Semi-tublar Rivets and Method of Using," was filed October 2, 1978, and issued on September 9, 1980. The '041 Patent expired on October 2, 1998.

CAUSES OF ACTION FOR FALSE PATENT MARKING

24. Main Hastings incorporates by reference the foregoing paragraphs as if fully set forth herein.

25. Defendants are sophisticated companies with many decades of experience applying for, obtaining, and litigating patents, and therefore know that patents expire and that an expired patent cannot protect any product.

26. Defendants have or regularly retain, sophisticated legal counsel.

27. Each false marking on the products identified in this Complaint is likely to, or at least have the potential to, discourage or deter persons and companies from commercializing competing products.

28. Defendants' false marking of their products have wrongfully quelled competition with respect to such products thereby causing harm to Main Hastings, the United States, and the public.

29. Defendants have wrongfully and illegally advertised patent monopolies that they do not possess and, as a result, have benefited by maintaining a substantial market share with respect to the products referenced in this Complaint.

30. Defendants know that patents provide the patent holder extreme market power to monopolize the invention.

31. Defendants know that all patents expire and that all monopoly rights in the patent terminate irrevocably when it expires.

32. As set forth in detail herein, and/or for other reasons that will be later

evidenced, Defendants have falsely marked the products described herein, with the intent to deceive the public, in violation of 35 U.S.C. §292.

COUNTS 1-2: FALSE MARKING ON DEFENDANTS' PRODUCTS

COUNT 1: THE '984 PATENT

33. The Plaintiff incorporates and restates the allegations of Paragraphs 1-32.

34. As noted above in paragraph 19, the '984 Patent is expired. Because the '984 Patent is expired, any product once covered by the '984 Patent is no longer protected by the patent laws of the United States. When the '984 Patent expired, its formerly protected property entered the public domain.

35. Despite the fact the '984 Patent is no longer in force, Defendants have and continue to mark (or cause to be marked) their CherryMax® Rivet with the '984 Patent.

36. Despite their knowledge of patent law and the current status of the '984 Patent, Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '984 Patent. Defendants knew or reasonably should have known that marking their products with the '984 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

37. Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products. Despite the easily modifiable format of Defendants' product documentation for the CherryMax® Rivet and the creation of and/or one or more revisions to such documentation well after the expiration of the '984 Patent as evidenced by the updated copyright notice dates and revision dates on such documentation, Defendants nevertheless have knowingly and repeatedly used, and continue to use, the expired '984 Patent in connection with the sale and/or advertising of their CherryMax®

Rivet products, with intent to deceive the public.

38. Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, the packaging, advertising, and/or documentation of the CherryMax® Rivet with the '984 Patent.

COUNT 2: THE '041 PATENT

39. The Plaintiff incorporates and restates the allegations of Paragraphs 1-32.

40. As noted above in paragraph 23, the '041 Patent is expired. Because the '041 Patent is expired, any product or method once covered by the claims of the '041 Patent is no longer protected by the patent laws of the United States. When the '041 Patent expired, its formerly protected property entered the public domain.

41. Despite the fact that the claims of the '041 Patent are no longer afforded patent protection, Defendants have and continue to mark (or cause to be marked) their Cherry Hollow End E-Z Buck with the '041 Patent.

42. Despite their knowledge of patent law and the current status of the '041 Patent, Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '041 Patent. Defendants knew or reasonably should have known that marking their products with the '041 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

43. Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products. Despite the easily modifiable format of Defendants' product documentation for the Cherry Hollow End E-Z Buck and the creation of and/or one or more revisions to such documentation well after the expiration

of the '041 Patent as evidenced by the updated copyright notice dates and revision dates on such documentation, Defendants nevertheless have knowingly and repeatedly used, and continue to use, the expired '041 Patent in connection with the sale and/or advertising of their Cherry Hollow End E-Z Buck products, with intent to deceive the public.

44. Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, the packaging, advertising, and/or documentation of the Cherry Hollow End E-Z Buck with the '041 Patent.

DAMAGES

45. The Plaintiff incorporates and restates the allegations of Paragraphs 1-44.

46. Upon information and belief, Defendants know, or reasonably should know, that marking their products with false patent statements was and is illegal under Title 35 of the United States Code.

47. Each falsely marked product is a separate "offense" pursuant to 35 U.S.C. §292(a).

PRAYER FOR RELIEF

48. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants as follows:

49. A decree that Defendants have falsely marked products in violation of 35 U.S.C. § 292;

50. An award of monetary damages, pursuant to 35 U.S.C. § 292, in the form of a civil monetary fine of \$500 per false marking "offense," or an alternative amount as determined by the Court, one half of which should be paid to the United States of America and one-half of which shall be paid to Main Hastings;

51. An accounting for any falsely marked products not presented at trial and an

award by the Court of additional damages for any such falsely marked products;

52. Enter a judgment and order requiring each Defendant to pay Main Hastings prejudgment and post-judgment interest on the damages awarded;

53. Order Defendants to pay Main Hastings' costs and attorney fees; and

54. Grant Main Hastings such other and further relief as it may deem just and equitable.

DEMAND FOR JURY TRIAL

55. Pursuant to Federal Rules of Civil Procedure Rule 38, Plaintiff hereby demands a jury trial on all issues triable by jury.

Dated: December 21, 2010

Respectfully submitted,

/s/ Winston O. Huff

Winston O. Huff, Attorney in Charge
State Bar No. 24068745
Huff Legal Group, P.C.
2500 Dallas Parkway, Suite 260
Plano, TX 75093
972.826.4467 (Direct)
972.378.9111 (Firm)
214.593.1972 (Fax)
wohuff@hufflegalgroup.com

ATTORNEYS FOR PLAINTIFF
MAIN HASTINGS, LLC

CERTIFICATE OF FILING

I hereby certify that on December 21, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

Respectfully submitted,

By: /s/ Winston O. Huff

Winston O. Huff
Huff Legal Group, P.C.
2500 Dallas Parkway, Suite 260
Plano, TX 75093
972.826.4467 (Direct)
972.378.9111 (Firm)
214.593.1972 (Fax)
wohuff@hufflegalgroup.com

CERTIFICATE OF SERVICE

This is to certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 21st day of December, 2010.

/s/ Winston O. Huff